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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. 1187

CRONAME, INCORPORATED,

Petitioner,

v.

TECHNOGRAPH PRINTED CIRCUITS, LTD., and TECHNOGRAPH PRINTED ELECTRONICS, INCORPORATED,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF AUTHORITIES

Cases	Page
Forsyth v. Hammond (1897) 166 U.S. 506, 514	5
Layne & Bowler Co. v. Western Well Works (1923) 261 U.S. 387, 393	5
Magnum Import Co. v. Coty (1923) 262 U.S. 159, 163	5
Technograph Printed Circuits, Ltd. v. Bendix Aviation Corp., (1963) 218 F. Supp. 1	2
Tyrrell v. District of Columbia (1917) 243 U.S. 1, 6	5

Statutes	
35 U.S.C. 103	2

Rules	
Federal Rules of Civil Procedure: Rule 56(c)	2

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—I—

OPINION BELOW

The opinion of the Court of Appeals for the Seventh Circuit, of which review is sought, is now officially reported at 356 F.2d 442. The opinion is captioned in four related cases. Petitioner in this case seeks review of the original opinion of the court of appeals. Other of the parties sought rehearing which has now been denied.

References herein to the opinion below will be both to the official report and the Appendix to the Petition.

—II—

JURISDICTION

Respondents admit jurisdiction.

—III—

COUNTER-STATEMENT

This is an ordinary patent infringement case in the interlocutory stage. It is one of four companion cases involving one or more of the same three patents.*

The patents are addressed to complex electronic circuits and components and the manufacture thereof.

Petitioner moved for summary judgment in the district court on the grounds of anticipation and obviousness (356 F.2d 445; Pet., 25). Its motion was unsupported by affidavits or other showing of fact. Respondents opposed the motion on the ground that there were genuine issues of material fact which precluded the entry of summary judgment; Civil Rule 56(c); and they filed extensive affidavits factually supporting their position. The district court filed no opinion; it entered only a minute order granting summary judgment dismissing the complaint in each of the four cases (356 F.2d 446; Pet., 27). Respondents appealed.

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*Respondents earlier filed an action on the three patents in the District of Maryland. That court held the patents invalid on various grounds and also held they had not been infringed; *Technograph Printed Circuits, Ltd. v. Bendix Aviation Corp.*, (1963) 218 F. Supp. 1. The Fourth Circuit affirmed on the sole ground of obviousnesses under 35 U.S.C. 103; 327 F.2d 497 (1964), cert. den. 379 U.S. 826 (1964) (356 F.2d 443; Pet., 22).

Counter-Statement.

All of the defendants below (including Petitioner) conceded in the Court of Appeals that the *Bendix* decision is not *res judicata* here (356 F.2d 446; Pet., 28). The record of the *Bendix* case is not a part of the record in this case.

Petitioner asserted in the Court of Appeals that respondents' affidavits raised no genuine issue of fact, but the Court of Appeals held (356 F.2d 447; Pet., 29):

> "We find from the record before us on this appeal that there is a genuine issue of material fact present here essential to the determination of the issues presented by defendants' motions for summary judgment."

The Court of Appeals correctly distinguished between questions of fact and questions of law arising in the cases (356 F.2d 447; Pet., 30).

—IV—

PETITIONER'S "QUESTIONS PRESENTED" DO NOT FAIRLY ARISE ON THIS RECORD:

Question 1 (Pet., 2) does not arise. The Court of Appeals properly held that there are genuine issues of material fact. The petition nowhere shows otherwise.

Question 2 (Pet., 2) does not arise. Contrary to petitioner's *ipse dixit* the Court of Appeals said (356 F.2d 448-9; Pet., 32-3).

> "In the instant case, the patents in suit and the voluminous prior art are of such technical nature as to escape our understanding. They may 'speak for themselves' but we feel the need of expert translation and interpretation, screened for us by appearance and demonstration before a trial court.
>
> "From a practical standpoint, an affirmance of the summary judgments in this case would require, in essence, a consideration of the case *de novo* with an adequate treatment of the patents in suit and the prior art. This we are neither prepared nor qualified to do, given the present state of the record. Effective judicial administration dictates this should not be required of a court of appeals."

Question 3 (Pet., 2) Whether it be called "collateral estoppel" or something else, what petitioner is asking here is that respondents be held estopped by the judgment in the *Bendix* case from litigating its patents against petitioner. Petitioner raised no such question below but, to the contrary, conceded that the *Bendix* decision is not *res judicata* here, and the Court of Appeals so noted (356 F.2d 446; Pet., 28). Insofar as the effect of the *Bendix* decision as precedent is concerned, the Court of Appeals correctly noted the force and effect of the rule of comity applicable when this case reaches final hearing (356 F.2d 448; Pet., 31).

—V—

ARGUMENT

Petitioner's Questions 1 and 2 present mere questions of fact. This Court has uniformly held that it will not grant certiorari to review such questions, particularly where, as here, they do not involve principles of public importance as distinguished from the mere interests of the parties: *Magnum Import Co. v. Coty* (1923) 262 U.S. 159, 163; *Layne & Bowler Co. v. Western Well Works* (1923) 261 U.S. 387, 393; *Forsyth v. Hammond* (1897) 166 U.S. 506, 514.

Petitioner's Question 3 is a contrived question which not only does not arise but is directly contrary to petitioner's concession below. This Court has held that it will not grant certiorari in such circumstances; *Tyrrell v. District of Columbia* (1917) 243 U.S. 1, 6.

The petition should be denied.

Respectfully submitted,

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